

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

STANLEY J. MADAY,

Plaintiff,

vs.

BOB DOOLEY, CHIEF WARDEN AT
MIKE DURFEE STATE PRISON,
INDIVIDUAL AND OFFICIAL CAPACITY;
DENNIS KAEMINGK, SECRETARY OF
THE SOUTH DAKOTA DOC,
INDIVIDUAL AND OFFICIAL CAPACITY;
DR. MARY CARPENTER, DIRECTOR OF
THE DEPARTMENT OF HEALTH,
INDIVIDUAL AND OFFICIAL CAPACITY;
JENNIFER STANWICK-KLIMEK,
DEPUTY WARDEN AT MIKE DURFEE
STATE PRISON, INDIVIDUAL AND
OFFICIAL CAPACITY; REBECCA
SCHIEFFER, ASSOCIATE WARDEN AT
MIKE DURFEE STATE PRISON,
INDIVIDUAL AND OFFICIAL CAPACITY;
ALEJANDRO REYES, ASSOCIATE
WARDEN AT MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; BRENT FLUKE, ASSOCIATE
WARDEN AT MIKE DURFEE STTAE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; JOSH KLIMEK, UNIT
MANAGER AT MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; TRAVIS TJEERDSMA, CASE
MANAGER AT MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; TAMMY DEJONG, CASE
MANAGER AT MIKE DURFEE STATE
PRISON, INDIVIDUAL AND OFFICIAL
CAPACITY; PA MICHAEL JOE HANVEY,

4:17-CV-04168-KES

REPORT & RECOMMENDATION ON
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Docket No. 39

MEDICAL PROVIDER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; PA BRAD ADAMS, MEDICAL PROVIDER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; DR. STEPHAN SCHROEDER, MEDICAL PROVIDER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; MISTY TOLSMA-HANVEY, NURSING SUPERVISOR, AT MIKE DUFEE STATE PRISON INDIVIDUAL AND OFFICIAL CAPACITY; LINDSEY RABBASS, NURSE AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; ROBIN MYER, NURSE AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; CANDICE FEJFAR, NURSE AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; DAYNA KLAWITTER, NURSE AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; DENNIS CROPPER, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; THOMAS HUITEMA, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; MICHAEL MEYER, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; LORI STRATMAN, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; MIKE GROSSHUESCH, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; NICOLE ST. PIERRE, CORRECTIONAL OFFICER AT MIKE DUFEE STATE PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; MURIEL NAMMINGA, LAUNDRY SUPERVISOR AT MIKE DUFEE STATE	
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PRISON, INDIVIDUAL AND OFFICIAL CAPACITY; CATHERINE SCHLIMGEN, LEGAL COUNSEL FOR THE SOUTH DAKOTA DOC, INDIVIDUAL AND OFFICIAL CAPACITY; UNKNOWN CBM FOOD SERVICES EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; UNKNOWN SOUTH DAKOTA DOC EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; UNKNOWN SOUTH DAKOTA DOH EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; JON E. LITSCHER, SECRETARY OF THE WISCONSIN DOC, INDIVIDUAL AND OFFICIAL CAPACITY; KATHARINE A. ARISS, ASSISTANT LEGAL COUNSEL FOR THE WISCONSIN DOC, INDIVIDUAL AND OFFICIAL CAPACITY; THOMAS P. MALONEY, LIBRARY SERVICES AND EDUCATIONAL TECHNOLOGY COORDINATOR FOR THE WISCONSIN DOC, INDIVIDUAL AND OFFICIAL CAPACITY; UNKNOWN WISCONSIN DOC EMPLOYEES, INDIVIDUAL AND OFFICIAL CAPACITIES; AND CBM FOOD SERVICES, MEAL AND COMMISSARY PROVIDER FOR THE SOUTH DAKOTA DOC, OFFICIAL CAPACITY;

Defendants.

This matter is pending before the court on the *pro se* complaint of prisoner Stanley Maday. Mr. Maday alleges numerous claims under 42 U.S.C. § 1983 and the Americans with Disabilities Act (ADA). See Docket No. 1. Among Mr. Maday's claims are that defendants are violating his constitutional rights by failing to provide him with access to Wisconsin law. Mr. Maday was

convicted under Wisconsin law, but because he was a state corrections officer prior to his conviction, he is being held in a South Dakota state prison. Now before the court is Mr. Maday's motion for a temporary restraining order (TRO) and a preliminary injunction. See Docket No. 39.

A court presented with a request for a TRO or preliminary injunction must consider the following four factors: (1) there is a threat of irreparable harm to the movant; (2) the balance between this harm and the injury that *not* granting the injunction will inflict on other parties; (3) the probability that movant will succeed on the merits; and (4) the public interest. Dataphase Systems, Inc. v. C.L. Systems, Inc., 640 F.2d 109, 114 (8th Cir. 1981).

In his motion, Mr. Maday alleges he has already filed a state habeas petition collaterally attacking his Wisconsin conviction. That petition was filed in Wisconsin state courts. Now, Mr. Maday alleges he wishes to pursue his federal remedies for habeas corpus pursuant to 28 U.S.C. § 2254. For this, he alleges he must have access to Wisconsin state legal materials. He seeks an order from the court requiring defendants to provide Wisconsin state legal materials to him.

First, it appears the Wisconsin state Department of Corrections already provided Mr. Maday with a copy of the entire chapter of Wisconsin statutes pertaining to state habeas practice in Wisconsin. See Docket No. 40-1 at p. 24 (enclosing a copy of Chapter 782 of the Wisconsin Statutes pertaining to habeas corpus). More importantly, however, federal habeas petitions collaterally attacking state court convictions (under § 2254), are based *solely*

on *federal* constitutional provisions or *federal* statutes or treaties. Section 2254 states: “The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” See 28 U.S.C. § 2254(a). If a prisoner in state custody presents claims based on state law in a § 2254 petition, the federal courts will not entertain those claims. Carney v. Fabian, 487 F.3d 1094, 1096-97 (8th Cir. 2007).

Mr. Maday has not alleged he has no access to federal habeas law or to federal constitutional or statutory law. The court finds he has failed to show a threat of irreparable harm (Wisconsin law will not assist him to prepare a § 2254 petition), and he has failed to show any probability of success on the merits (he has not shown the relevance of Wisconsin law to a § 2254 petition). Dataphase, 640 F.2d at 114. Therefore, he has not alleged grounds for the issuance of an injunction of any kind.

For the foregoing facts, law, and analysis, this court respectfully

RECOMMENDS that plaintiff Stanley Maday’s motion for a TRO and a preliminary injunction [Docket No. 30] be denied.

DATED this 20th day of March, 2018.

BY THE COURT:



VERONICA L. DUFFY
United States Magistrate Judge